

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ADVANCED PAIN MANAGEMENT SERV., *
LLC, et al.

Plaintiffs

vs.

CIVIL ACTION NO. MJG-12-3579

VIC WADHWA, et al.

Defendants

* * * * *

MEMORANDUM AND ORDER RE: N. WADHWA'S MOTIONS

The Court has before it Nikkita Wadhwa's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) [Document 23], Nikkita Wadhwa's Motion to Modify Amended and Restated Temporary Restraining Order, Preliminary Injunction, and Order Authorizing Expedited Discovery [Document 38], and the materials submitted relating thereto. The Court finds a hearing unnecessary.

I. BACKGROUND

Plaintiffs, Maryland-based companies, allege that Nikkita Wadhwa ("Mrs. Wadhwa") conspired, with her then husband, Vic Wadhwa ("Mr. Wadhwa") and others, to "unlawfully divert funds from Plaintiffs to pay for their own personal expenses, property, or services, or caused Plaintiffs to obtain property or services for their own personal benefit without authorization", which caused tortious injury to Plaintiffs

within Maryland. Compl. [Document 1] ¶ 214. Plaintiffs contend Mrs. Wadhwa is subject to this Court's jurisdiction despite her lack of physical presence in Maryland under the conspiracy theory of personal jurisdiction.

In Cawley v. Bloch, 544 F. Supp. 133, 135, (D. Md. 1982), Judge Joseph H. Young stated:

. . . when (1) two or more individuals conspire to do something (2) that they could reasonably expect to lead to consequences in a particular forum, if (3) one co-conspirator commits overt acts in furtherance of the conspiracy, and (4) those acts are of a type which, if committed by a non-resident, would subject the non-resident to personal jurisdiction under the long-arm statute of the forum state, then those overt acts are attributable to the other co-conspirators, who thus become subject to personal jurisdiction in the forum, even if they have no direct contacts with the forum.

In Mackey v. Compass Mktg., Inc., 892 A.2d 479, 486 (Md. 2006) the Maryland Court of Appeals, quoting from Judge Young's decision, stated:

We shall recognize this version of the [conspiracy jurisdiction] theory, based on the premise that one co-conspirator is acting as the agent of the others, and that those acts are acts of the other co-conspirator done "by an agent" within the meaning of § 6-103(b) of the Maryland long-arm statute.

II. DISCUSSION

A. Personal Jurisdiction

Mrs. Wadhwa seeks dismissal of the claims against her pursuant to Rule 12(b)(2)¹ due to a lack of personal jurisdiction. There appears no doubt that if Mrs. Wadhwa was a co-conspirator with Mr. Wadhwa to divert funds from Plaintiffs' (Maryland-based businesses that employed Mr. Wadhwa) as alleged by Plaintiffs, she would - by virtue of her responsibility for co-conspirator's acts and reasonable expectation that such acts would lead to consequences in Maryland - be subject to personal jurisdiction in Maryland.²

Mrs. Wadhwa asserts this Court lacks personal jurisdiction under the conspiracy theory because Plaintiffs' have failed to

¹ All Rule references are to the Federal Rules of Civil Procedure

² For a federal district court to exercise personal jurisdiction over a nonresident defendant two requirements must be satisfied:

1. The exercise of personal jurisdiction must be authorized under the long-arm statute of the state in which the court is located; and
2. The exercise of jurisdiction must comport with the due process requirements of the Fourteenth Amendment.

ASCO Healthcare, Inc. v. Heart of Tx. HealthCare and Rehab., Inc., 540 F. Supp. 2d 634, 640 (D. Md. 2008).

Maryland's long-arm statute permits a court to exercise personal jurisdiction over a nonresident who "directly or by an agent", causes "tortious injury in the State by an act or omission in the State." Md. Code Ann. Cts. & Jud. Proc. § 6-103(b)(3).

plead a plausible substantive conspiracy claim against her. However, Mrs. Wadhwa has not filed a dismissal motion under Rule 12(b)(6). When a defendant moves by pretrial motion pursuant to Rule 12(b)(2) to dismiss a complaint for lack of personal jurisdiction and the court decides the motion without conducting an evidentiary hearing, "the plaintiff need only make a prima facie showing of personal jurisdiction" and the court is to "take all disputed facts and reasonable inferences in favor of the plaintiff." Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390, 396 (4th Cir. 2003).

Here, an issue determinative of the merits of the substantive claim is also determinative of the jurisdictional issue. There can be no doubt that this Court has jurisdiction to determine whether it has jurisdiction. See In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir. 1998) (explaining "federal courts have authority to determine whether they have jurisdiction").

There are circumstances in which a district could decide to conduct an evidentiary hearing to determine factual issues determinative of the existence of jurisdiction. Determination of whether this Court has personal jurisdiction over Mrs. Wadhwa under the conspiracy theory would require a proceeding that would, essentially, constitute a trial of the substantive claim of conspiracy tort liability itself. The Court does not find it

prudent at this juncture to adjudicate the conspiracy-related issues through an evidentiary hearing prior to discovery.

After consideration of the allegations in the Complaint, the motion papers, and the nature of the claims asserted therein, and drawing all reasonable inferences in favor of Plaintiffs, as it must, the Court finds that Plaintiffs have made a prima facie showing that the Court may be able to exercise personal jurisdiction over Mrs. Wadhwa under the conspiracy theory³ of personal jurisdiction. However, the Court is not addressing the question of whether the factual allegations within the Complaint state a viable claim of conspiracy against Mrs. Wadhwa meeting the Rule 12(b)(6) standards.

B. Discovery

Mrs. Wadhwa seeks to avoid the obligations imposed upon her by virtue of the Amended and Restated Temporary Restraining Order, Preliminary Injunction, and Order Authorizing Expedited Discovery. She seeks relief because of the pendency of her motion seeking dismissal on jurisdictional grounds. As set forth herein, the claims against her are not being dismissed on

³ In a conference with the Court and counsel for Mrs. Wadhwa, Plaintiffs sought leave to present evidence that, they claim, would establish that Mrs. Wadhwa's contacts with Maryland were adequate to establish personal jurisdiction. The Court denied the request.

jurisdictional grounds. She is still a party to this case. Moreover, even if the claims against Mrs. Wadhwa were dismissed, she would be subject to third-party discovery obligations under Federal Rule of Civil Procedure 45.⁴

III. CONCLUSION

Accordingly,

1. Nikkita Wadhwa's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(B)(2) [Document 23] is DENIED.
2. Nikkita Wadhwa's Motion to Modify Amended and Restated Temporary Restraining Order, Preliminary Injunction, and Order Authorizing Expedited Discovery [Document 38] is DENIED.

SO ORDERED, on Friday, April 05, 2013.

/s/

Marvin J. Garbis
United States District Judge

⁴ The extent to which her obligations as a party may differ from those as a third-party can be addressed if, and when, the claims against her are dismissed.